

TITLE MC-12  
DEPARTMENT OF PLANNING  
SUBTITLE 02  
MAUI PLANNING COMMISSION  
CHAPTER 203  
SHORELINE RULES FOR THE MAUI PLANNING COMMISSION

Subchapter 1 General Provisions

§12-203-1	Title
§12-203-2	Purpose
§12-203-3	Applicability
§12-203-4	Definitions
§12-203-5	Severability

Subchapter 2 Shoreline Setback Lines; Shoreline Area

§12-203-6	Establishment of shoreline setback lines
§12-203-7	Request for a shoreline setback determination or an annual erosion hazard rate amendment
§12-203-8	Determination of the shoreline
§12-203-9	Site plans
§12-203-10	Structures and activities subject to these rules
§12-203-11	Prohibited activities within the shoreline area
§12-203-12	Permitted structures and activities within the shoreline area and coastal erosion hazard zone
§12-203-13	Request for a determination of structures and activities in the shoreline area and coastal erosion hazard zone

### Subchapter 3 Variances

§12-203-14	Variance application
§12-203-15	Criteria for approval of a variance

### Subchapter 4 Enforcement; Penalties

§12-203-16	Enforcement
§12-203-17	Penalties

### Subchapter 5 Appeals

§12-203-18	Appeal of director's decision; filing the notice of appeal
§12-203-19	Content of the notice of appeal
§12-203-20	Joint or consolidated appeals
§12-203-21	Service of the notice of appeal
§12-203-22	Payment of fees
§12-203-23	Contested case hearing on appeal
§12-203-24	Disposition of appeal

## SUBCHAPTER 1

### GENERAL PROVISIONS

§12-203-1 Title. The rules in this chapter shall be known as the "Shoreline Rules for the Maui Planning Commission." [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15))

§12-203-2 Purpose. One of the most important and significant natural resources of the County of Maui is its shoreline environment. Due to competing demands for utilization and preservation of the beach and ocean resources, it is imperative:

- (1) That use and enjoyment of the shoreline area be ensured for the public to the fullest extent possible;
- (2) That the natural shoreline environment be preserved;
- (3) That man-made features in the shoreline area be limited to features compatible with the shoreline area;
- (4) That the natural movement of the shoreline be protected from development;
- (5) That the quality of scenic and open space resources be protected, preserved, and where desirable, restored; and
- (6) That adequate public access to and along the shoreline be provided.

These steps are necessary because development and other man-made improvements have resulted in encroachment of structures near the shoreline and, in numerous instances, erosion and other disturbances affecting the natural movement of the shoreline. Moreover, these steps are also necessary because the Hawaiian Islands are subject to coastal natural hazards such as, tsunamis, high wave action, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose hazards to residences and other structures near the shoreline. These hazards may also necessitate the need to harden the shoreline to protect structures which may have an adverse impact on the environment. Further, continual

replacement of structures damaged or destroyed by ocean conditions may cause an economic hardship to other flood insurance policy holders by the increase in premiums. Consequently, the purpose of this chapter is to establish shoreline rules which regulate the use and activities of land within the shoreline environment in order to protect the health, safety, and welfare of the public by providing minimum protection from known coastal natural hazards; and to ensure that the public use and enjoyment of our shoreline resources are preserved and protected for future generations in accordance with the Hawaii coastal zone management law, HRS chapter 205A. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

§12-203-3 Applicability. These rules shall be applicable to all lands located within the shoreline area of the Island of Maui, County of Maui, State of Hawaii. [Eff 11/27/03] (Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

§12-203-4 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure or activity located within the shoreline setback area, or to pose the need to artificially fix the shoreline.

"Annual erosion hazard rate" means the annual rate of coastal erosion calculated according to the methodology developed by the university of Hawaii along transects placed at regular intervals of approximately sixty-six feet and as indicated on maps on file with the department. Said rates shall be updated on a regular basis at least once every ten years, provided funding is budgeted for the purpose; or pursuant to an annual erosion hazard rate amendment approved in accordance with section 12-203-7. Land area outside of the boundary of

these maps shall have no annual erosion hazard rate. Where the shoreline is fixed by;

(1) Artificial structures that are nonconforming or that have been approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure, or

(2) Exposed natural stabilized geographic features such as cliffs and rock formations, the annual erosion hazard rate shall cease at the interface.

"Artificially fix the shoreline" means to permanently establish the shoreline.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three.

"Beach nourishment" means the technique of placing sand fill along the shoreline to widen the beach and provide a buffer against coastal erosion and wave attack.

"Board approval" means approval of the board of land and natural resources pursuant to HRS section 183-C, as amended.

"Coastal erosion" means the wearing away of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline (vegetation line) retreat.

"Coastal erosion hazard zone" shall include all of the land area between the shoreline and a line as established by measuring twenty-feet plus a distance of fifty times the annual erosion hazard rate from the shoreline.

"Coastal hazards" means hazards created by and limited to coastal processes which are generated from waves or tides.

"Commission" means the Maui planning commission.

"Department" means the department of planning of the County of Maui.

"Director" means director of the department of planning.

"Dune restoration" means the technique of rebuilding an eroded or degraded dune through one or more various methods (sand fill, drift fencing, revegetation, etc.).

"HRS" means the Hawaii Revised Statutes, as amended.

"Lot" means a designated parcel, tract, or area of land established by subdivision or as otherwise established prior to the adoption of subdivision laws.

"Irregularly shaped lot" means a flag lot, traingular parcel, lot bordered by ocean on two or more sides, headland, or peninsula.

"Minimum buildable depth" means the minimum depth that a structure may be constructed taken from a line running makai of and parallel to the frontyard setback, not to exceed thirty-five feet in length.

"Minor activity" means an activity that does not adversely impact the existing grade of the setback area and shall be limited to activities related to landscaping, minor clearing (grubbing) of vegetation, and minor grading which is not subject to HRS chapter 343.

"Minor structure" means a man-made structure that costs less than \$125,000, does not impede the natural movement of the shoreline, does not alter the existing grade of the shoreline setback area, and may include but not be limited to: landscape features (*i.e.*, barbecues, lighting, benches, chairs, borders, wooden trellis, fences, railings, bird feeders, signs, safety improvements, etc.); movable/portable lifeguard stands; portable or movable walkways for public access; landscaping in conjunction with irrigation systems; irrigation systems, provided they are directed away from the shoreline; outdoor shower and water faucets; utility poles and accessory structures along existing corridors; and temporary tents for special events not exceeding fourteen consecutive days in duration during any three-month period. A minor structure shall not include a pool, spa, gazebo, car port, garage or similarly-massed structures of a permanent nature.

"Nonconforming structure/activity" means a structure or activity which was lawfully existing within the shoreline area and which:

- (1) Was completely built prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989; or

- (3) Was outside the shoreline area when it received either a building permit or board approval.

"Overlay" means the more mauka (landward) Segments of each line, in circumstances where the methods of

calculating the shoreline setback line result in two lines that intersect with each other.

"Plan" means a detailed construction plan drawn to scale that shows the design of a structure proposed to be built within the shoreline area. The plan shall consist of data which include, but which are not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings;
- (3) Topography in and around the proposed construction; and
- (4) Any other information which identifies the existing condition of the subject parcel of land.

The director may require that the plan include an accurate instrument survey of the lot as well as cross sections of the lot at designated locations to be prepared by a surveyor licensed in the State of Hawaii.

"Qualified demolition" means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with:
  - (A) Section 12-203-2(5) that states that the quality of scenic and open space resources should be protected, preserved and, where desirable, restored; and
  - (B) Section 205A-2(c)(3)(C), HRS, which states that an objective and policy of the coastal zone management program is to preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
- (6) Will comply with:
  - (A) Chapter 19.62, Maui County Code, relating to flood hazard areas;
  - (B) Chapter 20.08, Maui County Code, relating to soil erosion and sedimentation control; and

(C) Chapter 6E, HRS, relating to historic preservation.

"Shoreline", as defined in HRS 205A, as amended, means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of natural rather than artificially induced vegetation growth, or the upper limit of debris left by the wash of the waves which has been certified by the board of land and natural resources within the preceding twelve months.

"Shoreline processes" means the natural flow of the ocean which affect the movement of the shoreline area or lands bordering the ocean, including submerged lands.

"Shoreline setback area" means "shoreline area" as defined in HRS chapter 205A, as amended, which includes all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" or "shoreline setback area" shall include the entire structure.

"Shoreline setback line" means that line, as defined in HRS chapter 205A, as amended, running inland from and parallel to the shoreline at a horizontal plane.

"Structure" includes, as defined in HRS chapter 205A, as amended, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-45, 205A-49; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-22, 205A-41)

§12-203-5 Severability. If any provision or part of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff 11/27/03]



(Auth: HRS Chapter 205A, Parts I and III; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-1, 205A-2, 205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49)

## SUBCHAPTER 2

### SHORELINE SETBACK LINES; SHORELINE AREA

#### §12-203-6 Establishment of shoreline setback lines.

(a) All lots shall have a shoreline setback line that is the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances:

- (i) Twenty-five feet plus a distance of fifty times the annual erosion hazard rate from the shoreline;
- (ii) Based on the lot's depth as follows:
  - (A) A lot with an average lot depth of one hundred feet or less shall have a shoreline setback line twenty-five feet from the shoreline;
  - (B) A lot with an average lot depth of more than one hundred feet but less than one hundred sixty feet shall have a shoreline setback line forty feet from the shoreline; and
  - (C) A lot with an average lot depth of one hundred sixty feet or more shall have a shoreline setback line located at a distance from the shoreline equal to twenty-five percent of the average lot depth, but not more than one hundred fifty feet.
- (iii) For irregularly shaped lots, or where cliffs, bluffs, or other topographic features inhibit the safe measurement of boundaries and/or the shoreline, the shoreline setback line will be equivalent to twenty-five percent of the lot's depth as determined by the Director, to a maximum of one hundred fifty feet from the shoreline.

(b) Notwithstanding any provision of this section to the contrary, a lot shall have a shoreline setback line at a distance from the shoreline that provides for

the minimum buildable depth; provided that, in no case shall the shoreline setback line be less than twenty-five feet from the shoreline.

(c) Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii. [Eff 12/26/06] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

§12-203-7 Request for a shoreline setback determination or an annual erosion hazard rate amendment.

(a) A request for a shoreline setback determination or an annual erosion hazard rate amendment shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the determination, which could include but not be limited to a certified shoreline survey; construction plans, if any; existing and finish contours; photographs of the shoreline setback area; written reasons addressing compliance with the criteria set forth in these rules; and analysis of coastal erosion rates and shoreline processes. The director shall approve, approve with conditions, or deny a request for a shoreline setback determination in accordance with the criteria set forth in these rules. The director shall transmit any request for an annual erosion hazard rate amendment with all relevant information to appropriate agencies for review and comment. Upon consultation with various agencies, the director shall approve or approve with conditions, a request for an annual erosion hazard rate amendment if the director finds that based on clear and convincing evidence the best parcel-specific estimate of historical shoreline change differs from the established rate. The director shall take action on any application for an annual erosion hazard rate amendment within thirty days from the date final agency comments are received and the application is deemed complete by the director.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any application for, or issuance of, a shoreline setback determination or annual erosion hazard rate amendment,

receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of each applicant, the location and purpose of the development, if any, and the shoreline setback determination. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-2, 205A-45)

§12-203-8 Determination of the shoreline. (a) The shoreline shall be established and certified in accordance with the procedures prescribed by the board of land and natural resources; provided that, no determination of a shoreline shall be valid for a period longer than twelve months except for those portions of the shoreline which are fixed by man-made structures, which have been approved by appropriate government agencies, and for which engineering drawings exist to locate the interface between the shoreline and the structure. [Eff 11/27/03] (Auth: HRS §205A-42; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-42, 205A-43, 205A-43.6, 205A-45)

§12-203-9 Site plans. Unless otherwise required by the director, all site plans showing the location of the shoreline and shoreline setback line of a lot shall:

- (1) Be drawn to the scale of 1"=20'0";
- (2) Show the shoreline and existing conditions along properties immediately adjacent to the subject lot;
- (3) Show contours at a minimum interval of two feet; and
- (4) Show all natural and man-made features in the subject area. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-45)

§12-203-10 Structures and activities subject to these rules. All structures and activities located or proposed to be located within the shoreline area shall conform to the requirements of this chapter. The requirements of this chapter shall not abrogate the

requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately inland of the shoreline area shall also be subject to these rules until a certified and confirmed survey map, prepared in accordance with the provisions of section 12-203-8 herein, is filed with the department. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45)

§12-203-11 Prohibited activities within the shoreline area. The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or
- (2) Where the mining or taking is authorized by a variance pursuant to these rules; or
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
- (4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§46-11.5, 46-12, 205A-43.6, 205A-44, 205A-45)

§12-203-12 Permitted structures and activities within the shoreline setback area. (a) The following structures and activities are permitted in the shoreline setback area:

- \_\_\_\_\_ (1) Existing nonconforming structures/activities.
- (2) A structure or activity that received a shoreline variance or administrative approval from the director prior to the adoption of these rules. Said variance/approval shall be valid.
- \_\_\_\_\_ (3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- (4) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publically owned, and which result in no interference with natural beach processes; provided that the permitted structure may be repaired, but shall not be enlarged within the shoreline setback area without a variance.
- \_\_\_\_\_ (5) A structure, excluding those defined as nonconforming, that received a written government approval and is the subject of repairs, provided that:
  - (A) The repairs are valued by a licensed professional engineer or architect at less than fifty percent of the current replacement cost of the structure;
  - (B) The repairs do not enlarge or expand the structure, nor intensify the structure's use; and
  - (C) The repairs are permitted by the building code, flood hazard regulations, and special management area law.
- (6) Repairs to a nonconforming structure that was damaged by fire, insects, natural disaster, accidental means, or other calamity, provided that:
  - (A) The structure was not damaged by coastal hazards;
  - (B) The repairs shall not enlarge or expand the structure, nor intensify the structure's use;
  - (C) The repairs shall also be permitted by the building code, flood hazard

- regulations, and special management area law; and
- (D) The repairs shall be started within two-years from the date of the damage.
  - (7) Qualified demolition.
  - (8) Beach nourishment/dune restoration projects approved by all applicable governmental agencies.
  - (9) A structure or activity that has been determined by the director to be a minor structure or minor activity within the shoreline setback area which does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline and which meets the purpose of this chapter, HRS chapter 205A, as amended, and chapter 19.62, Maui County Code, relating to coastal high hazard districts.
  - (10) Emergency protection of an imminently threatened legally habitable structure, or infrastructure at imminent risk of failure which would substantially affect public health or safety, provided that:
    - (A) The protection is temporary and is removed within one hundred eighty calendar (180) days of installation;
    - (B) The protection receives approval in accordance with section 12-202-16, special management area rules of the Maui planning commission; and
    - (C) Given the significance of the emergency, the protection is the best management alternative in relation to beach, shoreline, and coastal resource conservation.
- (b) All structures and activities not specifically permitted in this section are prohibited.
- (c) If any new structures are proposed to be located within the shoreline setback area, the following restrictions shall apply:
- (1) All new structures shall be elevated on pilings or columns, in accordance with the standards for development in chapter 19.62, Maui County Code, relating to coastal high

hazard districts, so that the lowest horizontal portion of the structural members of the lowest floor is elevated above the base flood elevation, or above existing grade, whichever is greater.

- (2) The applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Maui harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from coastal natural hazards and coastal erosion.
- (3) The construction of all erosion-control or shoreline hardening structures or activities, with the exception of beach or dune nourishment activities, and landscape planting and irrigation, shall be prohibited throughout the life of the structure or activity.

The requirements of subsections (c)(2) and (c)(3) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court prior to the date of approval of all structures or activities. A copy of the recorded unilateral agreement shall be filed with the director and the director of public works.

(D) Minor structures or activities shall be completed or operating within one year from the later of the date of the department's determination or the date of approval of the last discretionary permit. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45; MCC Chapter 19.62)

§12-203-13 Request for a determination of structures and activities in the shoreline setback area.

(a) All proposed structures and activities in the shoreline setback area shall be subject to an assessment and determination made by the director.

A request for a determination of structures and activities in the shoreline setback area shall be submitted to the department on a form prescribed by the director and shall be accompanied by applicable information to assist in the determination, which may include, but not be limited to; a certified shoreline

survey; construction plans; a list of proposed plants and their growth at maturation; existing and finish contours; flood zones; topography; proximity to the shoreline; and all shoreline hardening structures; photographs of the shoreline setback area; an environmental assessment; written reasons addressing compliance with the criteria set forth in these rules; and an analysis of coastal erosion rates and shoreline processes. The director shall approve, approve with conditions, or deny such request in accordance with the criteria set forth in these rules, and chapter 12-202 of the special management area rules for the Maui planning commission.

(b) The director shall notify the commission, at the commission's next regularly scheduled meeting, of any application for, or issuance of, a determination of structures and activities in the shoreline setback area, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of each applicant, the location and purpose of the development, and the shoreline setback determination. [Eff 11/27/03] (Auth: HRS §§205A-2, 205A-43.6, 205A-45; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.6, 205A-44, 205A-45)



## SUBCHAPTER 3

### VARIANCES

§12-203-14 Variance application. (a) A written application for variance shall be made in a form prescribed by the director and shall be filed with the director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the director to be necessary to evaluate the application. The application shall also include:

- (1) An administrative fee as established in the County budget;
- (2) Certification from the owner or lessee of the lot which authorizes the application for variance;
- (3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii;
- (4) The names, addresses and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity or operation is to occur;
- (5) A site plan of the shoreline setback area, drawn to scale, showing:
  - (A) Existing natural and man-made features and conditions within the shoreline setback area;
  - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - (C) The certified shoreline and the shoreline setback line;
  - (D) Contours at a minimum interval of two feet unless waived by the director; and
  - (E) Proposed development and improvements showing new conditions;
- (6) A copy of the certified shoreline survey map of the property;
- (7) Detailed justification of the proposed project,

which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis on coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS chapter 205A, part III, and this chapter, the director shall submit the application to the commission. If the application is determined to be incomplete by the director, the director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty days prior to the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after

public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Maui, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the commission; or

- (4) Maintenance, repair, reconstruction, and minor additions or alternations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes. [Eff 11/27/03] (Auth: HRS §§205A-43.5, 205A-46, 343-5; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43.5, 205A-46, 343-5)

§12-203-15 Criteria for approval of a variance.

(a) A shoreline area variance may be granted for a structure or activity otherwise prohibited by this chapter, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or

improvements are not allowed within the shoreline area;

- (9) Private facilities or improvements that may artificially fix the shoreline; provided that, the commission also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the commission imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
  - (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the commission also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.
- (b) A structure or activity may be granted a variance upon grounds of hardship if:
- (1) The applicant would be deprived of reasonable use of the land if required to fully comply with the shoreline setback rules;
  - (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and
  - (3) The proposal is the practicable alternative which best conforms to the purpose of the shoreline setback rules.
- (c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.
- (d) For purposes of this section, hardship shall not include: economic hardship to the applicant; county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; any other permit or approval which may have been issued

by the commission. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for purposes of this section.

(e) No variance shall be granted unless appropriate conditions are imposed:

- (1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
- (2) To minimize risk of adverse impacts on beach processes;
- (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (4) To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or thirty-foot height limitation; and
- (5) To comply with chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

(f) Notwithstanding any provision of this section to the contrary, the commission may consider granting a variance for the protection of a legal habitable structure or public infrastructure; provided that, the structure is at risk of damage from coastal erosion, poses a danger to the health, safety and welfare of the public, and is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(g) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of section 12-202-17 of the special management area rules of the Maui planning commission. [Eff 11/27/03] (Auth: HRS §205A-43.5, 205A-46; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.5, 205A-46; MCC Chapters 19.62, 20.08)

## SUBCHAPTER 4

### ENFORCEMENT; PENALTIES

§12-203-16 Enforcement. The director shall enforce these rules in accordance with HRS chapter 205A. [Eff 11/27/03] (Auth: HRS §205A-43.6; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-43.6)

§12-203-17 Penalties. Any person who violates any provision of these rules shall be subject to the penalties provided for in HRS §205A-32. [Eff 11/27/03] (Auth: HRS §§205A-32, 205A-43.6; Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §205A-32)

## SUBCHAPTER 5

### APPEALS

§12-203-18 Appeal of director's decision; filing the notice of appeal. Appeal of the director's decision including, but not limited to, the validity of the annual erosion hazard rate, and the determination of minor structures/activities, may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the filing of the notice of appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-19 Content of the notice of appeal. The notice of appeal shall identify the party or parties taking the appeal in the caption and body of the notice of appeal. The notice of appeal shall designate the decision appealed from and shall state the reasons for the appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-20 Joint or consolidated appeals. If two or more parties are entitled to appeal from a decision of the director and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single



appellant. Appeals may be consolidated by order of the commission upon the commission's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-21 Service of the notice of appeal. If the appellant is someone other than the applicant, appellant shall serve a file-marked copy of the appeal by mail or delivery thereof to counsel of record for each other party, or, if a party is not represented by counsel, to the party at the party's last known address. Proof of service shall be filed with the department within seven days after the filing of the notice of appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-22 Payment of fees. Upon the filing of any separate or joint notice of appeal, the appellant shall pay such fees as are set forth in the County budget ordinance. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-23 Contested case hearing on appeal. The commission shall hold a contested case hearing on the appeal. The director, the appellant, and, where the appellant is someone other than the applicant, the applicant shall be parties to the proceedings. Subchapters 3, 4, and 5 of chapter 12-201 of the rules of practice and procedure for the Maui planning commission, relating to petitions to intervene, contested case procedures, and post hearing procedures, respectively, shall govern the proceedings, except that petitions to intervene on an appeal shall be filed with the commission

no later than ten days after the meeting at which the commission received notification of the filing of an appeal. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

§12-203-24 Disposition of appeal. The commission may affirm the decision of the director, or may reverse or vacate and remand the decision of the director if the substantial rights of the petitioner may have been prejudiced because the decision is:

- (1) Based on clearly erroneous findings of material fact or erroneous application of the law; or
- (2) Arbitrary or capricious in its application; or
- (3) A clearly unwarranted abuse of discretion. [Eff 11/27/03] (Auth: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15)) (Imp: HRS §§205A-43, 205A-43.5, 205A-43.6, 205A-45, 205A-49, Maui County Charter §§8-8.4, 13-2(15))

S:\ALL\Thorne\Sand\_Rules\01-THE NEW SAND RULES DEC07.wpd